

CERTIFIED MAIL

MAY 14 1993

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(c)(4) of the Internal Revenue Code and have determined that you do not qualify for exemption under that section. Our reasons for this conclusion and the facts on which it is based are explained below.

The information you submitted indicates that you were incorporated on [REDACTED] pursuant to Chapter [REDACTED] of Title [REDACTED] of the Code of [REDACTED]. Your By-laws state that you are organized to administer the condominium, establish the means and methods of collecting the contributions for the common expenses, arrange for the management of the condominium and perform all of the other acts that may be required to be performed by the Association.

You have stated that your organization's activities will be to collect dues from unit owners to cover common expenses, arrange for services to maintain areas of the condominium including lawn maintenance, parking lot maintenance, waste disposal, liability insurance, maintain a checking account, keep records, file government forms, and establish and enforce administrative policies.

Section 501(c)(4) of the Internal Revenue Code provides for exemption from federal income tax for organizations that are civic leagues or organizations not formed for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational or recreational purposes.

Income Tax Regulations 1.501(c)(4)-1(a)(2) provides that to be exempt as an organization promoting social welfare, the organization must be exclusively engaged in promoting in some way the common good and general welfare of the community.

Code	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
Surname	[REDACTED]	[REDACTED]	[REDACTED]				
Date	5-11-93	5/12/93	5/14/93				

[REDACTED]

Section 1.501(c)(4)-1(a)(2)(i) of the Income Tax Regulations provides that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this section is one which is operated primarily for the purpose of bringing about civic betterments and social improvements.

It has been held that where the primary economic benefit from an organization is limited to that organization's members the organization is not operated exclusively for the social welfare within the meaning of the statute. Consumer Farmer Milk Coop. v. Commissioner 186 F. 2d 68 (CA2; 1950), affirming 13 T.C. 150 (1949). New York State Association of Real Estate Boards Group Insurance Fund, 54 T.C. 1325, 1333 (1970).

In Commissioner v. Lake Forest, Inc., 305 F. 2d 814 (1962), the Court held that an organization was not organized exclusively for the promotion of social welfare when its activities partake largely of the nature of an economic and private cooperative undertaking. The Court also stated that an organization seeking tax exemption under section 501(c)(4) must bring itself within the terms of the statute granting exemption to claim the benefit it affords. The Court then explained that the organization's activities, while available to all citizens eligible for membership, were not benefits municipal or public in nature. Nor were they bestowed on the community as such.

Rev. Rul. 65-201, 1965-2 C.B. 170, holds that a cooperative organization operating and maintaining a housing development and providing housing facilities and maintenance services on a cooperative basis does not qualify for tax exemption under section 501(c)(12) of the Code or any provision of the Code.

Revenue Ruling 74-17 concerns an association formed by unit owners of condominium housing project which was operated to provide for the management, maintenance and care of the common areas of the project. Because the essential structure of a condominium association involves ownership in common by all unit owners of common areas and the maintenance and care of private

[REDACTED]

property, it was held that the organization could not be recognized as tax exempt because the activities of the association constituted providing private benefit for the unit owners.

The rights, duties, and privileges of members of an association of unit owners in a condominium property derive from, and are established by, statutory and contractual provisions and are inextricably and compulsorily tied to the owner's acquisition and enjoyment of his property interests in the condominium.

Condominium type ownership by its very nature necessarily entails ownership in common by all unit owners of common areas or elements supportive to the individual units in a structural and/or functional sense. Thus, any maintenance or care of such common areas or elements constitutes private benefit to the individual members as opposed to promoting the common good and general welfare to the people of the community.

It is held that the direct economic benefit from your activities is for the benefit of your members as individuals and not for the direct benefit of the community as a whole. Accordingly, you are not primarily engaged in promoting the common good and general welfare of the people of the community. Therefore, we conclude that you are not qualified for recognition of exemption under section 501(c)(4) of the Code and you are required to file Federal income tax returns.

Your organization fails to meet the operational test of section 501(c)(4). Your activity of administering to the condominium, establishing the means and methods of collecting assessments, and arranging for the management of the condominium are not activities described in section 501(c)(4) of the Code. Therefore you do not qualify for exemption as an organization described in section 501(c)(4) of the Code.

Until you have established an exempt status, you are not relieved of the requirement for filing Federal income tax returns.

Your attention is called to section 528 of the Internal Revenue Code which was added by the Tax Reform Act of 1976. This section provides that, in certain circumstances, a non-exempt homeowners association may elect not to be taxed on its "exempt function income" which includes membership dues, fees or assessments from owners of real property. The election is made by filing Form 1120H. If you determine that your organization qualifies under section 528, you may find it beneficial to make this election.

[REDACTED]

If you do not agree with our determination, you may request consideration of this matter by the Office of Regional Director of Appeals. To do this you should file a written appeal as explained in the enclosed Publication 892. Your appeal should give the facts, law, and any other information to support your position. If you want a hearing, please request it when you file your appeal and you will be contacted to arrange a date. The hearing may be held at the regional office, or, if you request, at any mutually convenient district office. If you will be represented by someone who is not one of your principal officers, he or she will need to file a power of attorney or tax information authorization with us. If you do not appeal this determination within 30 days from the date of this letter, as explained in Public 892, this letter will become our final determination on this matter.

Sincerely,

[REDACTED]  
Acting District Director

Enclosure: Publication 892